

Message

From: Dennis, Allison [Dennis.Allison@epa.gov]
Sent: 11/3/2020 9:54:39 PM
To: Keigwin, Richard [Keigwin.Richard@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]
CC: Richmond, Jonah [Richmond.Jonah@epa.gov]; Mills, Madeline [Mills.Madeline@epa.gov]; Bolen, Derrick [bolen.derrick@epa.gov]; Giddings, Daniel [giddings.daniel@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]
Subject: RE: For Rick/Alex Approval; DTN Progressive Farmer; Dicamba 24c; DDL ASAP

Yes, OGC reviewed and concurred.

From: Keigwin, Richard <Keigwin.Richard@epa.gov>
Sent: Tuesday, November 3, 2020 4:27 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>
Cc: Richmond, Jonah <Richmond.Jonah@epa.gov>; Mills, Madeline <Mills.Madeline@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Giddings, Daniel <giddings.daniel@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>
Subject: RE: For Rick/Alex Approval; DTN Progressive Farmer; Dicamba 24c; DDL ASAP

This looks fine to me. Has OGC reviewed this draft response?

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Tuesday, November 03, 2020 4:03 PM
To: Dunn, Alexandra <dunn.alexandra@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>
Cc: Richmond, Jonah <Richmond.Jonah@epa.gov>; Mills, Madeline <Mills.Madeline@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>; Giddings, Daniel <giddings.daniel@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>
Subject: For Rick/Alex Approval; DTN Progressive Farmer; Dicamba 24c; DDL ASAP

Progressive Farmer asked the following questions (see below for her original, long email). We are looking for your approval on our proposed response. Thanks! -Allison

Questions:

1. Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?
2. Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?
3. Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?
4. Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.

Response:

Ex. 5 Deliberative Process (DP)

Greg Siedschlag
Chief, Communications Branch
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Phone: (703) 603-9044
Cell: (571) 319-7949
pronouns: he/him/his

From: Emily Unglesbee <Emily.Unglesbee@dtm.com>
Sent: Wednesday, October 28, 2020 8:29 AM
To: Press <Press@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>
Subject: Dicamba decision questions

I have some questions for EPA on what the Tuesday dicamba announcement by Administrator Andrew Wheeler and Assistant Administrator for OCSPP, Alexandra Dunn mean for state regulation of dicamba going forward.

On the press call yesterday, Dunn stated that any future restrictions by states of the federal label would be required to work via Section 24(a) of FIFRA, which means they would involve rulemaking legislative processes by individual states. She said that Section 24(c) would only be used for proposed expansions of the federal label by states. This stance is reiterated in the EPA's Memorandum on the dicamba decision: "FIFRA section 24(a) allows a state to regulate pesticides more restrictively than EPA under the state's own authority. However, some of the states that have imposed cut-off dates on dicamba uses have done so under section 24(c). Section 24(c) only authorizes states to issue registrations for additional uses of federal registrations to meet special local needs; if states wish to impose further restrictions on the dicamba products, or any other federally registered pesticides, they should do so under section 24(a) of FIFRA."

This is a change in EPA's past interpretation of Section 24(c), which is something EPA has suggested it might do in the past, as stated in this spring 2019 statement: "Because section 24(a) allows states to regulate the use of any federally registered pesticide, and some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) registrations and the circumstances under which it will exercise its authority to disapprove those registrations." Source: <https://www.epa.gov/pesticide-registration/guidance-fifra-24c-registrations>.

However, that EPA statement added this: "Before making any changes in this regard, EPA intends to take public comment on any potential new approaches before adopting them."n

So here are my questions:

1. Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?
2. Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?
3. Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?
4. Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.

Emily Unglesbee
Staff Reporter, DTN

DTN/Progressive Farmer
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